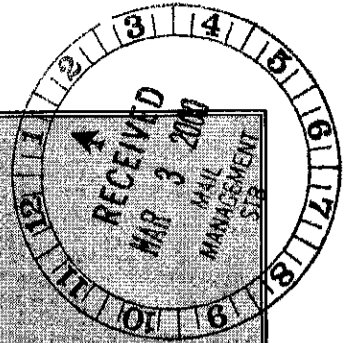


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STATEMENT OF THE

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

PRESENTED TO THE

SURFACE TRANSPORTATION SUBCOMMITTEE

Ex Parte No. 582

Public Views on Major Rail Consolidations

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Presented By

American Public Transit Association  
1201 New York Avenue, N. W.  
Washington, DC 20005  
(202) 898-4000



APTA is a nonprofit international association of over 1,270 member organizations including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

## ***Overview***

The American Public Transportation Association (APTA) is pleased to submit this testimony to the Surface Transportation Board (STB) on major rail consolidations and the present and future structure of the North American rail industry. APTA's testimony will also comment specifically on the proposed merger of the Burlington Northern Santa Fe (referred to collectively as BNSF) and Canadian National Railroad Company, Grand Trunk Western Railroad Incorporated, and Illinois Central Railroad Company (referred to collectively as CN). This testimony is presented on behalf of the nation's public transportation industry, which in many instances uses the track or right-of-way of various freight railroads throughout North America.

The Staggers Act of 1980 is rightfully credited with helping bring about a resurgence in America's freight railroads. At the same time, the past two decades have also seen a significant consolidation and downsizing of America's railroad network, resulting in a reduction in the number of Class 1 rail systems from 36 to eight (possibly soon to be seven). Certain shippers and economic interests have claimed that the Staggers Act and the ICC Termination Act have gone too far in deregulating the railroad industry. In a similar vein, commuter and rail transit agencies are concerned that a shrinking, overburdened track network will be inadequate in serving a growing rail transportation industry.

The proposed BNSF/CN merger will directly affect many thousands of daily rail passengers on the Metra commuter rail system in metropolitan Chicago, and will affect the negotiating posture of many other communities seeking to initiate commuter rail operations in the near future, including communities in Minnesota, Washington, Missouri and California. APTA urges STB to protect current and prospective passenger services by establishing, as a condition of the proposed merger, a minimum five-year oversight condition during which STB will monitor events to assure there are no merger-related impacts on rail passenger services.

## ***About APTA***

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## ***STB Rulings on Conrail and Union Pacific – Questions Remain***

On July 23, 1998, STB approved, with conditions, the sale of Conrail to CSX and Norfolk Southern. Among other things, STB established a five-year oversight condition during which it will monitor events to assure there are no transaction-related impacts on "regional rail passenger operations" and on Amtrak. The STB decision regarding Conrail came in the aftermath of the Union Pacific - Southern Pacific merger (referred to collectively as UP), where rail passenger service was given low priority, resulting in widespread service problems. Similar problems have been encountered in the wake of the Conrail breakup as well.

As a condition of approving the Conrail sale, the STB required the railroads to report performance information to the Board. Unfortunately, that requirement did not, initially, include reporting on passenger operations impacts. When passenger reporting was subsequently required, it was limited to specific sections of the CSX and NS territories. It was not until significant service complaints surfaced that passenger impacts were considered relative to performance reporting, and even then the requirement did not extend to the full system.

While some may argue that there have been no impacts on passenger service as a result of the Conrail sale, a recent *Washington Post* article (February 22, 2000) pointed out the negative impact on MARC's commuter operations. The article highlights the fact that on-time performance dropped from 90% or better prior to the sale (the actual number was 95%), to as low as 73% following the sale. A specific review of on-time performance for MARC's Camden and Brunswick lines, both of which are operated and dispatched by CSX, reveals that performance is still considerably worse than it was before June 1, 1999. Even VRE's commuter operations, which have received a higher level of attention from their host freight railroads, saw its on-time performance levels drop to 85% in June, 1999 and 90% in July, compared to 95% in April.

In our June 3, 1998 testimony to the Board regarding the Conrail sale we stated that:

In the case of the recent Union Pacific merger, widespread passenger rail problems have arisen. Dispatching and coordination problems have gone unresolved, on-time performance has deteriorated and communications in general have been difficult as the freight railroad has focused on its own freight problems. Rail passenger service has had very low, or no, priority and passengers have suffered through unnecessary delays and degradations in the quality of service that they receive.

Schedule interference, dispatching, and maintenance procedures are critical to assessing the impact of the Conrail acquisition. As a condition for approval, we strongly recommend that STB require assurances that rail passenger providers will be able to provide reliable and high quality service without adverse affects resulting from consolidation.

Based on this experience with the Conrail and UP transactions, it can be expected that without mitigating actions by the STB, similar results could follow a BNSF/CN. The five-year oversight provision required in the Conrail case needs to be continued and strengthened in order to insure that the communities affected by a BNSF/CN merger do not experience the problems that have resulted from the Conrail and UP cases.

If a BNSF/CN merger occurs, the importance of monitoring passenger rail impacts cannot be overstated. Past experience suggests a reduced level of attention on passenger operations following mergers as the rail freight carriers confront the myriad of merger-related freight operations issues that inevitably arise. Absent a meaningful oversight condition, this will again cause serious disruption to passenger rail service.

The Board needs to ensure that attention is given to system-wide impacts, and not just to the new territories affected by the merger. In the case of the Conrail acquisition, the passenger service problems were generally in the established portions of the system. Reporting requirements need to be established at the beginning of the process and need to be monitored on a continuing basis. Of particular concern to APTA members are instances when freight volumes projected prior to the merger - which are analyzed for their impact on passenger operations - are exceeded after the merger occurs.

APTA would like to emphasize that the geographic area served by BNSF and CN is an area that includes many growing communities with a significant number of New Start projects. In many instances these projects have been under consideration and public review for a number of years.

### ***Passenger Rail: Preparing for a Future of Growth***

Across America, rail passenger service is in the midst of a rebirth. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA 21) alone authorizes over 200 new rail projects, about half of which are likely to use existing rail freight corridors. STB's examination of the future of America's railroads must take into account this growth trend.

Unfortunately, a shortcoming exists in the current framework in which these new rail projects move forward: specifically, a process for helping resolve disagreements which may arise when parties cannot agree on terms and conditions for use of a railroad right-of-way. Currently, no such process or venue exists for consideration of public interest issues. Freight railroads can, and often do, unilaterally deny access to passenger rail agencies, sometimes for legitimate reasons, but often for dubious reasons or for no reason at all other than not wanting passenger rail operations. Public agencies so denied have no recourse under the existing framework. We are thus concerned that the proposed merger may make what is already a difficult process even more so.

The normal way a state or regional public transportation agency would gain access to property needed for public improvements would be through eminent domain proceedings. However, state law based condemnation authority does not extend to property owned by freight railroads, which come under the interstate authority of the federal STB.

APTA and the Association of American Railroads (AAR) have met to discuss the possibility of an industry-wide framework to help facilitate the negotiation of local agreements. While these discussions have identified numerous areas of mutual benefit, we have not been successful in negotiating any process for resolving disputes.

Finally, in its review of major rail consolidations, STB should note that the ability of rail passenger agencies to obtain the rail access agreements they need to serve the public is a very difficult task under normal circumstances, but becomes even more complex in a continually downsizing core system.

### ***Impacts on Rail Passenger Service Must be a Prime Consideration in Merger Determinations***

In its announcement of this hearing, the Board raises the question as to whether now is the time to focus on opportunities to improve service, as opposed to continued consolidation. As these issues are considered, APTA urges the Board to fully consider the potential impacts of mergers on passenger operations, as well as on freight. We emphatically agree with the emphasis in STB's hearing notice that attention needs to be placed on how to improve service. We are equally emphatic that this focus on improved operations must extend to passenger as well as freight services. In some cases, this will require careful oversight on operating and dispatching matters.

Historically, America's rail corridors have been used for both freight and passenger purposes. At one time, both were operated by the private sector under laws governing public utilities - laws that recognized the public interest in the system. As passenger operations became unprofitable, private railroads were relieved of the obligation to operate passenger service directly. Services were often taken over and supported financially by public entities. STB's review and oversight must recognize the evolving rail passenger industry, and its critical inter-relationship with the rail freight industry.

Accordingly, APTA suggests the following three principles for STB to consider in its review of merger requests:

- 1) STB should carefully consider the impacts of mergers on existing and future rail passenger services as a key factor in its determination on the merger itself. Any adverse impacts to rail passenger operations should be weighed, as a public policy issue, in the decision as to whether or not to approve any merger.
- 2) If there are any existing or future rail passenger operations that will be adversely affected by a merger, STB should consider ways to mitigate the impacts of that merger by granting additional access rights in that corridor, or by granting rights to prospective new services.
- 3) In its approval of railroad mergers, we urge the STB to maintain a strong oversight role to protect the interests of rail passengers.

APTA thanks STB for the opportunity to comment. We would be pleased to provide any additional information that may be useful to the Board.